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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,502	07/30/2003	Gary Mitchell Davenport	P138	7908

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EXAMINER

JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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06/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/630,502

Applicant(s)

DAVENPORT ET AL.

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 2/8/07 wherein claims 19 and 21 were amended.

Note: Claims 1-27 are pending.

RESPONSE TO APPLICANT'S ARGUMENTS

2. Applicant's amendment filed 2/8/07 to the rejection of claims 19-27 under 37 CFR 102 have been considered. The 102b rejection is WITHDRAWN because Applicant has amended the claims to overcome the rejection.

WITHDRAWN CLAIMS

3. Claims 1-18 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

NEW GROUNDS OF REJECTION

New Matter Rejection

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 19-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims have been amended to state that the polyol fatty acid polyester provides about 0.001 to about 450 mg/kg body weight of the mammal. However, according to pages 8-9, bridging paragraph, of the specification, the dosage ranges from about 0.001 to about 400 mg/kg, not 450 mg/kg as set forth in the amended claims. Applicant is reminded that one cannot arbitrarily select a value that is not specifically disclosed in the specification.

103 Rejection

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Boer et al (JP 02227051) in view of Mattson (US Patent No. 4,034,083).

De Boer et al disclose the preparation of low calorie food comprising polyol fatty acid polyesters supplemented with dietary fiber. Also, De Boer et al disclose that because of obesity and the risk of health by poorly balanced fat intake, there is incessant interest in reduced calorie food products. In addition, De Boer et al disclose that it is known that sugar fatty acid polyesters such as polyol fatty acid polyesters are suitable as low calorie substitutes for food products. The polyol fatty acid polyesters have the ability to capture fat soluble substances such as cholesterol in the

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gastrointestinal tract and subsequently remove such substances from the human body (see entire document, especially pages 3-4, 'Detailed Specification'). De Boer et al discloses that liquid polyol fatty acid polyesters may leak freely through the anal sphincter if a considerable amount of the liquids polyester is consumed (page 4, third complete paragraph). In a practical example, rats were administered a fatty acid polyester (pages 14-16). However, De Boer et al fails to specifically state that the amount of polyol fatty acid polyester administered to the subjects provides about 0.001 to about 450 mg/kg body weight of the mammal.

Note: While the De Boer et al document was previously mailed to Applicant, a copy is included with this office action).

Mattson discloses compositions useful for inhibition absorption of cholesterol that comprise polyol fatty acid polyesters fortified with vitamins. The compositions may be used in low calorie foods and for treating hypercholesterolemia (see entire document, especially, abstract; column 3, lines 17-48; column 5, lines 3-43). The therapeutic regimens of Mattson disclose that dosage amounts of the polyester will vary with the severity of the hypercholesterolemic condition and the duration of the treatment. Dosages amounts may range from about 0.01 mg/kg to about 500 mg/kg. Also, Mattson discloses that when the phrase 'mg/kg' is used, it designates the 'milligram of polyester per kilogram of body weight' (column 9, lines 30-45, especially, 33-39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of De Boer et al using the teachings of

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Mattson and alter the amount of polyol fatty acid polyester depending on the subjects weight because a skilled practitioner in the art would recognize that if you have an obese subject, then the amount of polyester administered to that subject would not be the same as that administered to a subject that is 1, 5, 10, or 20 pounds overweight. In other words, the skilled practitioner would recognize that since the weight of a subject varies and the cited prior art discloses that polyol fatty acid polyesters (according to De Boer et al, see pages 3 and 4) are suitable as low calorie substitutes for food products. In addition, it is disclosed that the polyesters have the ability to capture fat soluble substances, such as cholesterol, in the gastrointestinal tract and subsequently remove such substances from the body. Also, according to De Boer et al, since liquid polyol fatty acid polyesters may leak freely through the anal sphincter due to a considerable intake of the polyesters, one would be motivated to modify the intake of such polyesters for the subject being treated. Furthermore, Mattson discloses that the dosage of polyester varies depending on the severity of the conditions and duration of the treatment and that the amount of polyester administered to the subject is based on units of mg/kg which are defined as the milligram of polyester per kilogram of body weight. Thus, one would be motivated to create a personalized program designed based on the subject's weight to maximize results. Also, since both De Boer et al and Mattson are directed to polyol fatty acid polyesters useful as low calorie food products, the references may be considered to be within the same field of endeavor. Thus, the reference teachings are combinable.

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

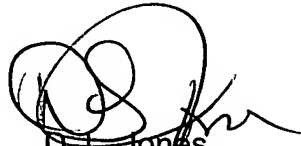
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D. L. Jones
Primary Examiner
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June 4, 2007